

## **REMARKS**

### **Introduction**

Applicants acknowledge receipt of the non-final Office Action dated February 2, 2010. Claims 1-19 are pending. Claims 3-4 and 7-12 stand withdrawn. Claims 1-2, 5-6, and 13-19 stand rejected.

Applicants hereby amend claims 1 and 19 to recite that the pesticidally active pre-mix composition comprises mesotrione and an insecticide selected from the group consisting of chlorpyrifos, chlorpyrifos-methyl, terbufos, tefluthrin and thiamethoxam. Claims 2, 5, 6 and 14 are canceled. Claims 15 and 18 are amended to depend from claim 1.

No new matter is introduced. Reconsideration is respectfully requested.

### **New Rejection Under 35 U.S.C. §103**

The Examiner rejects claims 1-2, 5-6, and 13-19 under 35 U.S.C. §103(a) as being unpatentable over **Shribbs et al.** (U.S. Patent No. 5,741,756) in view of **Clough** (U.S. Publication No. 2005/0233986) and **Scher et al.** (U.S. Patent No. 5,912,207).

The Examiner contends that **Shribbs et al.** contends that that it would have been obvious to one of ordinary skill in the art at the time of the invention to make a pesticidally active combination comprising an HPPD-inhibiting herbicide and an insecticide for the purpose of further broadening the spectrum of activity against undesirable pests. The Examiner notes, however, that Applicants' data is persuasive with respect to the combination of the copper salt of mesotrione and the insecticides chlorpyrifos-methyl, terbufos, tefluthrin and thiamethoxam.

As noted above, Applicants currently amend claims 1 and 19 to a pesticidally active pre-mix composition comprising mesotrione and an insecticide selected from the group consisting of chlorpyrifos, chlorpyrifos-methyl, terbufos, tefluthrin and thiamethoxam.

As taught in the present specification, the combination of a HPPD-inhibiting herbicide (e.g., mesotrione) with an insecticide results in a considerable increase in crop damage, compared to that seen following application of the HPPD inhibiting herbicide alone. As the Examiner now appreciates, Applicants have surprisingly discovered that if an agrochemically effective salt of the HPPD inhibiting herbicide is used, a safening effect is observed and the crop damage is reduced to an acceptable level. The skilled person following the "generic" guidance afforded by either **Shribbs et al.**, **Clough**, or both, would simply arrive at a composition which would be expected to exhibit an unacceptable level of crop damage (e.g., crop phytotoxicity) as

described in the present specification. To the contrary, the present claims now clearly represent a substantial selection over the largely generic disclosure of **Shribbs et al.** and **Clough**.

Further, in order to arrive at the currently claimed specific selection, a significant alteration of the **Shribbs et al.** and **Clough** references is required. One of ordinary skill, upon reading **Shribbs et al.** and **Clough**, would not have been led to or motivated to select the combination of an HPPD inhibiting herbicide, such as the currently claimed mesotrione, a salt thereof, and insecticide (e.g., chlorpyrifos, chlorpyrifos-methyl, terbufos, tefluthrin and thiamethoxam) from all other agriculturally active compounds mentioned in the respective specifications. Accordingly, the instantly claimed selection or combination of mesotrione in the form of an agrochemically acceptable salt with the currently recited insecticides is not disclosed or even remotely suggested by **Shribbs et al.** and **Clough**.

The Examiner relies on the **Scher et al.** reference to substantiate the rejection of claims 5 and 6. As noted above, Applicants hereby cancel claims 5 and 6. Applicants also cancel claim 14 thereby obviating the rejection of each of these claims.

Withdrawal of the rejection of claims 1-2, 5-6, and 13-19 under 35 U.S.C. §103(a) is respectfully requested.

**CONCLUSION**

Applicants believe the claims are in condition for allowance. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

Respectfully submitted,

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/Mark D. Jenkins/

Mark D. Jenkins  
Reg. No. 59,566  
Attorney for Applicants  
Womble Carlyle Sandridge & Rice, PLLC  
Post Office Box 7037  
Atlanta, Georgia 30357-0037  
Telephone: (919) 484-2317  
Facsimile: (919) 484-2096  
Customer No.: 86344